

ORIGINALUNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIAJOSUE SOTO, Individually, on behalf of all)
others similarly situated, et al.)
Plaintiff)

vs)

DIAKON LOGISTICS (DELAWARE))
INC., and DOES 1-50 inclusive,)
Defendant)

Case No. 08-cv-0033-L-AJB

PRO HAC VICE APPLICATION

DIAKON LOGISTICS (DE) INC.

Party Represented

FILED

JAN 23 2008

I, Robert L. Browning hereby petition the above entitled court to permit me
(Applicant)
to appear and participate in this case and in support of petition state:My firm name: SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY, LLP
Street address: 10 West Market Street, Suite 1500
City, State, ZIP: Indianapolis, Indiana 46204
Phone number: (317) 637-1777That on June 15, 1990, I was admitted to practice before the Indiana Supreme Court
(Date) (Name of Court)
and am currently in good standing and eligible to practice in said court, See also Exhibit A attached.

that I am not currently suspended or disbarred in any other court, and

that I ☒ have) ☐ have not) concurrently or within the year preceding this application made any pro hac
vice application to this court.

(If previous application made, complete the following)

Title of case Josue Soto v. Diakon Logistics (DE), Inc.Case number 07-cv-1378 LAB (JMA) Date of application 11/27/07Application ☐ granted ☒ denied See Exhibit B attached.

I declare under penalty of perjury that the foregoing is true and correct.

Robert L. Browning
(Signature of Applicant)**DESIGNATION OF LOCAL COUNSEL**

I hereby designate the below named as associate local counsel.

Christopher C. McNatt Jr., (CA Bar #174559)(626) 795-4700

(Name)

Scopelitis, Garvin, Light, Hanson & Feary, LLP

(Telephone)

(Firm)

2 North Lake Avenue, Suite 460Pasadena, CA91101


(Street)

(City)

(Zip code)

Robert L. Browning
Signature of Applicant

I hereby consent to the above designation.



Signature of Designee Attorney

The pro hac vice application is hereby approved for filing.

Date 1/23/08
It is so ordered,



Received \$180.00 for Court Library fee

fees paid 1/24/08 Deputy Clerk

Pro Hac Vice (For this one particular occasion)

An attorney who is not a member of the California State Bar, but who is a member in good standing of, and eligible to proactive before, the bar of any United States Court or of the highest court of any State or of any Territory or Insular possession of the United States, who is of good moral character, and who has been retained to appear in this Court, be permitted to appear and participate in a particular case. An attorney is not eligible to practice pursuant to this paragraph in any one or more of the following apply to him/her: (1) he/she resides in California, (2) he/she is regularly employed in California, or (3) he/she is regularly engaged in business, professional, or other activities in California.

The pro hac vice application shall be presented to the Clerk and shall state under penalty of perjury (1) the attorney's residence and office address, (2) by what court he/she has been admitted to practice and the date of admission, (3) that he/she is in good standing and eligible to practice in said court, (4) the he/she is not currently suspended or disbarred in any other court, and (5) if he/she has concurrently or within the year preceding his/her current application made any pro hac vice application to this court, the title and the case number of each matter wherein he made application, the date of application, and whether or not his/her application was granted. He/She shall also designate in his application a member of the bar of this Court with whom the Court and opposing counsel may readily communicate regarding the conduct of the case and upon whom papers shall be served. He/She shall file with such application the address, telephone number, and written consent of such designee.

Fee: \$180.00, payable to Clerk, U.S. District Court

Application and fee should be mailed directly to:

W. Samuel Hamrick, Jr., Clerk
United States District Court
Southern District of California
880 Front Street Suite 4290
San Diego, California 92101-8900

EXHIBIT A

Robert L. Browning Bar admission information:

Bar of the State of Arizona - 1988 (#012069)
Bar of the State of Indiana - 1990 (#15128-49)
State and Federal Courts of Arizona - 1988
State and Federal Courts of Indiana - 1990
Federal Court of Colorado - 2004
United States Court of Appeals for the Ninth Circuit - 1988
United States Court of Appeals for the Seventh Circuit - 1991
United States Court of Appeals for the Sixth Circuit - 1998
United States Court of Appeals for the Eleventh Circuit - 2003

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JOSUE SOTO, individually, on behalf of
all other similarly situated, and on behalf
of the General Public,

Plaintiff,

vs.

DIAKON LOGISTICS (DELAWARE),
INC., a foreign corp.; and DOES 1
through 50, inclusive,

Defendants.

CASE NO. 07cv1378-LAB (JMA)

**ORDER TO SHOW CAUSE RE
FEDERAL JURISDICTION**

Federal district courts have original jurisdiction over civil class actions predicated on diversity of citizenship "in which the amount in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs," among other threshold requirements. 28 U.S.C. § 1332(d)(2). From the face of the First Amended Complaint ("FAC") in this case, filed September 4, 2007 as a putative class action alleging violations of California labor laws, plaintiffs purport to proceed on the basis of diversity jurisdiction. However, they allege only an amount in controversy which "exceeds the sum or value of \$75,000, exclusive of interest and costs." FAC ¶ 6.

The docket does not reflect plaintiffs have served the Complaint or the FAC, and named defendant Diakon Logistics, Inc. has not appeared in the action.¹ On its own motion

¹ However, on November 27, 2007, three attorneys from a law firm in Indianapolis, Indiana presented *Pro Hac Vice* Applications to the Clerk of Court in this matter, identifying Diakon Logistics as their client and designating as proposed "local counsel" an attorney from the law firm's Pasadena, California office. Counsel is referred to this district's Civ. L. R. 83.3(c)(6). The undersigned District Judge requires an attorney appearing in this court *pro hac vice* to designate a member of the bar of

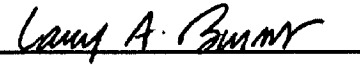
EXHIBIT

B

1 based on the jurisdictional defect appearing from the face of the pleading, **IT IS HEREBY**
2 **ORDERED** on or before **December 14, 2007** plaintiffs shall show cause in a Declaration
3 from counsel why this action should not be dismissed for lack of subject matter jurisdiction,
4 and shall show good cause for the failure to cure the same defect evident in the original
5 Complaint. The Declaration shall be accompanied by a proposed Second Amended
6 Complaint to cure all jurisdictional pleading deficiencies, with a request for leave to file that
7 amended pleading. Alternatively, on or before that date, plaintiffs shall file a voluntary
8 dismissal of the action pursuant to Fed.R.Civ.P 41(a)(1). **IT IS FURTHER ORDERED** failure
9 to timely respond to this Order will result in the dismissal of the case in its entirety, without
10 prejudice.

11 **IT IS SO ORDERED.**

12 DATED: November 30, 2007

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14 **HONORABLE LARRY ALAN BURNS**
15 United States District Judge
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this court who maintains an office within this district as co-counsel with the authority to act as
attorney of record for all purposes. The Applications are accordingly rejected on that basis.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, **Michelle Lazo**, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 2 North Lake Avenue, Suite 460, Pasadena, California 91101.

On January 16, 2008, I served the foregoing document described as **PRO HAC VICE APPLICATION OF ROBERT L. BROWNING** on interested parties in this action by placing a ☒ true copy/ the ☐ original thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED PROOF OF SERVICE MAILING LIST

☒ **(BY MAIL)** I deposited such envelope in the mail at Pasadena, California. The envelope was mailed with postage thereon fully prepaid.

☒ I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Pasadena, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☒ **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on January 16, 2008, at Pasadena, California.


Michelle Lazo

PROOF OF SERVICE MAILING LIST

Mr. Todd J. Hilts
Law Office of Todd J. Hilts
2214 Second Avenue
San Diego, California 92101

Mr. Derek J. Emge
Emge & Associates
550 West C Street, Suite 1600
San Diego, California 92101

Mr. David A. Huch
Law Offices of David A. Huch
7040 Avenida Encinas, Suite 104
Carlsbad, California 92011